

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

ANDREW W. MILLER,

Plaintiff,

v.

Civil Action No. 2:20-cv-00127

BRIAN R. BLICKENSTAFF,

Defendant.

ORDER

This action was previously referred to Dwane L. Tinsley, United States Magistrate Judge, who has submitted on February 28, 2022, his Proposed Findings and Recommendation ("PF&R") pursuant to the provisions of 28 U.S.C. § 636(b) (1) (B). PF&R, ECF No. 4.

The court has reviewed the magistrate judge's PF&R. The magistrate judge explains "that, while incarcerated, Plaintiff has filed at least three federal civil actions that have been dismissed as being frivolous or malicious, or for failure to state a claim upon which relief may be granted and, thus, he qualifies for application of the three strikes provision contained in 28 U.S.C. § 1915(g)." Id. at 4. The magistrate judge further explains "that Plaintiff fails to state any credible facts that reasonably indicate that he is under imminent danger of serious physical injury sufficient to warrant

an exception to the [Prison Litigation Reform Act of 1995] three strikes rule with respect to the claim in his complaint." Id. Thus, the magistrate judge recommends as follows:

[I]t is respectfully recommended that the presiding District Judge deny Plaintiff's Application to Proceed without Prepayment of Fees and Costs and dismiss this civil action without prejudice.

Id. at 5 (citations and emphasis omitted). The plaintiff, proceeding pro se, has not objected to the Proposed Findings and Recommendation.

Accordingly, it is ORDERED that:

1. The Proposed Findings and Recommendation be, and hereby is, adopted by the court and incorporated herein;
2. The plaintiff's civil action be, and hereby is, dismissed without prejudice; and
3. The plaintiff's Application to Proceed Without Prepayment of Fees and Costs be, and hereby is, denied; and
4. This action be, and hereby is, dismissed from the docket.

The Clerk is directed to forward copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: April 14, 2022